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cont.
a spinal distractor sized for passage through said guard, said spinal distractor having a body and a disc penetrating member extending from said body and into the disc space between the two adjacent vertebral bodies for bearing against adjacent endplates of the two adjacent vertebral bodies.

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170. (Amended) The apparatus of claim 139, wherein said disc penetrating member of said spinal distractor has a first portion for bearing against one of the endplates and a second portion for bearing against a second of the endplates, said first and second portions being in a parallel relationship to each other.

REMARKS

Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: September 19, 2001

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PATENT
Attorney Docket No. 102.0003-04000
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CLAIM CHANGES

Please amend the claims as follows:

107. (Amended) An apparatus for use in performing human spinal surgery for fusing vertebral bodies adjacent a disc space comprising:

a guard having a passage for providing guided access to the disc space and the adjacent vertebral bodies, said guard having a proximal end and an opposite distal end, said guard having spine engaging portions at said distal end of said guard for holding said guard to the spine, said spine engaging portions being substantially in line with side surfaces of said guard so that said spine engaging portions do not substantially increase the outer cross-sectional dimension of said guard near the distal end of said guard, said guard having a flat portion between at least some of said spine engaging portions for preventing over-penetration of said spine engaging portions into the spine;

a spinal distractor sized for passage through said guard, said spinal distractor having a body and a disc penetrating member extending from said body and into the disc space between the two adjacent vertebral bodies for bearing against adjacent endplates of the two adjacent vertebral bodies; and

a bone removal device for forming through said guard an implantation space across the disc space.

137. (Amended) The apparatus of claim [136] 107, wherein said disc penetrating member of said spinal distractor has a first portion for bearing against one

of the endplates and a second portion for bearing against a second of the endplates, said first and second portions being in a parallel relationship to each other.

139. (Amended) An apparatus for use in performing human spinal surgery for fusing vertebral bodies adjacent a disc space comprising:

a guard having a passage for providing guided access to the disc space and the adjacent vertebral bodies, said guard having a proximal end and an opposite distal end and sides therebetween, said guard having openings in said sides, said guard having spine engaging portions at said distal end of said guard for holding said guard to the spine, said spine engaging portions being substantially in line with said sides of said guard so that said spine engaging portions do not substantially increase the outer cross-sectional dimension of said guard near the distal end of said guard; and

a spinal distractor sized for passage through said guard, said spinal distractor having a body and a disc penetrating member extending from said body and into the disc space between the two adjacent vertebral bodies for bearing against adjacent[®] endplates of the two adjacent vertebral bodies.

170. (Amended) The apparatus of claim [169] 139, wherein said disc penetrating member of said spinal distractor has a first portion for bearing against one of the endplates and a second portion for bearing against a second of the endplates, said first and second portions being in a parallel relationship to each other.